

DISTRICT JUDGE JOHN C. COUGHENOUR
MAGISTRATE JUDGE MARY A. THEILER

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

GARY C. TANNER,

Plaintiff,

v.

DR. KENNEY, et al.,

Defendants.

NO. C07-0713-JCC-MAT

DEFENDANTS' ANSWER TO
PLAINTIFF'S REVISED AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL

Defendants, by and through their attorneys, ROBERT M. MCKENNA, Attorney General, and HEIDI S. HOLLAND, Assistant Attorney General, respectfully submit the following Answer to Plaintiff's Revised Amended Complaint¹.

Under Civil Rule (CR) 8(b), Defendants generally deny each allegation of fact in the Plaintiff's Amended Complaint unless the allegation of fact is expressly admitted. Defendants will not respond to legal argument contained in the Plaintiff's Amended Complaint and deny such argument if it is unclear whether the Plaintiff is asserting a factual or legal claim.

¹ Pursuant to the Court's order, Defendants are responding to the pleading entitled Motion for Leave to File Amended Complaint (Dkt. #18) which will hereinafter be referred to as Plaintiff's Revised Amended Complaint.

1 (1) Paragraph (1) does not set forth any allegations of fact, therefore no response is
 2 necessary. To the extent that Paragraph (1) contains legal argument, Defendants deny the
 3 same.

4 (2) Defendants admit that this Court has jurisdiction over Plaintiff's federal
 5 constitutional claims. To the extent that Paragraph (2) contains legal argument, Defendants
 6 deny the same. Defendants further deny that Plaintiff is entitled to any of the requested relief.

7 (3) Defendants admit Paragraph (3) of Plaintiff's Revised Amended Complaint.

8 (4) Defendants admit that Plaintiff is currently incarcerated at Monroe Correctional
 9 Complex (MCC) in the Special Offender Unit (SOU) and that the mailing address is P.O. Box
 10 514, Monroe, WA 98272-0514. Defendants lack sufficient knowledge or information to form
 11 a belief as to the truth of the remaining allegations contained in Paragraph (4) of Plaintiff's
 12 Revised Amended Complaint and therefore deny the same.

13 (5) Defendants admit that Kenneth Quinn is employed by the Department of
 14 Corrections (DOC) as Superintendent of MCC and has been named as a defendant in this suit.
 15 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
 16 remaining allegations contained in Paragraph (5) of Plaintiff's Revised Amended Complaint
 17 and therefore deny the same.

18 (6) Defendants admit that Douglas Kollasch is employed by DOC at MCC as a
 19 Health Care Manager II and has been named as Defendant in this matter.

20 (7) Defendants admit that J. David Kenney, M.D. was employed by DOC at MCC
 21 as the Medical Director of MCC and has been named as a defendant in this matter. Defendants
 22 lack sufficient knowledge or information to form a belief as to the truth of the remaining
 23 allegations contained in Paragraph (7) of Plaintiff's Revised Amended Complaint and therefore
 24 deny the same.

25 (8) Defendants admit that Sheryl Allbert is an Accredited Registered Nurse
 26 Practitioner (ARNP) employed by DOC at MCC. Defendants lack sufficient knowledge or

1 information to form a belief as to the truth of the remaining allegations contained in Paragraph
2 (8) of Plaintiff's Revised Amended Complaint and therefore deny the same.

3 (9) Defendants admit that Plaintiff has brought suit against them in their individual
4 and official capacities. The remaining allegations in Paragraph (9) contain legal argument;
5 accordingly, Defendants deny the same.

6 (10) Defendants admit that Craig McIntyre is employed by DOC as a Corrections
7 Officer (C/O) assigned to MCC-SOU-E Unit.

8 (11) Defendants lack sufficient knowledge or information to form a belief as to the
9 truth of the assertions contained in Paragraph (11) of Plaintiff's Revised Amended Complaint,
10 and therefore deny the same. Defendants deny violating Plaintiff's constitutional rights.

11 (12) Defendants deny the allegations contained in Paragraph (12) of Plaintiff's
12 Revised Amended Complaint as legal argument.

13 (13) Defendants deny the allegations contained in Paragraph (13) of Plaintiff's
14 Revised Amended Complaint as legal argument.

15 (14) Defendants deny the allegations contained in Paragraph (14) of Plaintiff's
16 Revised Amended Complaint as legal argument.

17 (15) Defendants deny the allegations contained in Paragraph (15) of Plaintiff's
18 Revised Amended Complaint as legal argument.

19 (16) Defendants deny the allegations contained in Paragraph (16) of Plaintiff's
20 Revised Amended Complaint as legal argument.

21 (17) Defendants deny the allegations contained in Paragraph (17) of Plaintiff's
22 Revised Amended Complaint as legal argument.

23 (18) Defendants deny the allegations contained in Paragraph (18) of Plaintiff's
24 Revised Amended Complaint as legal argument.

25 (19) Defendants deny the allegations contained in Paragraph (19) of Plaintiff's
26 Revised Amended Complaint as legal argument.

1 (20) Defendants deny the allegations contained in Paragraph (20) of Plaintiff's
2 Revised Amended Complaint as legal argument.

3 (21) To the extent Paragraph (21) of Plaintiff's Revised Amended Complaint
4 contains legal argument, Defendants deny the same. Defendants lack sufficient knowledge or
5 information to form a belief as to the truth of the factual assertions contained in Paragraph (21)
6 of Plaintiff's Revised Amended Complaint, and therefore deny the same.

7 (22) Defendants deny the allegations contained in Paragraph (22) of Plaintiff's
8 Revised Amended Complaint as legal argument.

9 (23) Defendants deny the allegations contained in Paragraph (23) of Plaintiff's
10 Revised Amended Complaint as legal argument.

11 (24) Defendants deny the allegations contained in Paragraph (24) of Plaintiff's
12 Revised Amended Complaint as legal argument.

13 (25) Defendants deny the allegations contained in Paragraph (25) of Plaintiff's
14 Revised Amended Complaint as legal argument.

15 (26) Defendants deny the allegations contained in Paragraph (26) of Plaintiff's
16 Revised Amended Complaint as legal argument.

17 (27) Defendants deny the allegations contained in Paragraph (27) of Plaintiff's
18 Revised Amended Complaint as legal argument.

19 (28) Defendants deny the allegations contained in Paragraph (28) of Plaintiff's
20 Revised Amended Complaint as legal argument.

21 (29) Defendants lack sufficient knowledge or information to form a belief as to the
22 truth of the assertions contained in Paragraph (29) of Plaintiff's Revised Amended Complaint,
23 and therefore deny the same.

24 (30) Defendants lack sufficient knowledge or information to form a belief as to the
25 truth of the assertions contained in Paragraph (30) of Plaintiff's Revised Amended Complaint,
26 and therefore deny the same.

1 (31) Defendants deny the allegations contained in Paragraph (31) of Plaintiff's
2 Revised Amended Complaint as legal argument.

3 (32) Defendants lack sufficient knowledge or information to form a belief as to the
4 truth of the assertions contained in Paragraph (32) of Plaintiff's Revised Amended Complaint,
5 and therefore deny the same. To the extent Paragraph (32) of Plaintiff's Revised Amended
6 Complaint contains legal argument, Defendants deny the same.

7 (33) Defendants deny the allegations contained in Paragraph (33) of Plaintiff's
8 Revised Amended Complaint as legal argument.

9 (34) Defendants admit that C/O Beecroft and Denver McCarty were dismissed as
10 Defendants by court order. Dkt. #24. Defendants lack sufficient knowledge or information to
11 form a belief as to the truth of the remaining assertions contained in Paragraph (34) of
12 Plaintiff's Revised Amended Complaint, and therefore deny the same. To the extent Paragraph
13 (34) of Plaintiff's Revised Amended Complaint contains legal argument, Defendants deny the
14 same.

15 (35) Defendants lack sufficient knowledge or information to form a belief as to the
16 truth of the assertions contained in Paragraph (35) of Plaintiff's Revised Amended Complaint,
17 and therefore deny the same.

18 (36) Defendants deny violating Plaintiff's constitutional rights. Defendants deny the
19 remaining assertions in Paragraph (36) as legal argument.

20 (37) Defendants deny that Plaintiff is entitled to judgment against them.

21 (38) Defendants deny that Plaintiff is entitled to any of the relief requested in
22 Paragraph (38).

23 (39) Defendants deny that Plaintiff is entitled to any of the relief requested in
24 Paragraph (39).

25 (40) Defendants deny that Plaintiff is entitled to any of the relief requested in
26 Paragraph (40).

1 (41) Defendants deny that Plaintiff is entitled to any of the relief requested in
2 Paragraph (41).

3 (42) Should this matter proceed to trial, Defendants demand that all issues of fact be
4 determined by a jury.

5 (43) Defendants deny that Plaintiff is entitled to any of the relief requested in
6 Paragraph (43).

7 (44) Defendants deny that Plaintiff is entitled to any of the relief requested in
8 Paragraph (44).

9 (45) Defendants admit Paragraph (45) of Plaintiff's Revised Amended Complaint.

10 (46) Defendants lack sufficient knowledge or information to form a belief as to the
11 truth of the assertions contained in Paragraph (46) of Plaintiff's Revised Amended Complaint,
12 and therefore deny the same.

13 **AFFIRMATIVE DEFENSES**

14 Having answered the allegations of Plaintiff's Complaint, and by way of further answer
15 and affirmative defense, Defendants affirmatively allege:

16 1. Plaintiff has failed to state a claim upon which relief can be granted by failing to
17 allege facts which rise to the level of a civil rights deprivation.

18 2. The injuries or damages if any, claimed by the Plaintiff were proximately
19 caused or contributed to by the fault of the Plaintiff.

20 3. Defendants are not liable for the acts of superiors or subordinates in which
21 Defendants did not personally participate.

22 4. Defendants are entitled to qualified immunity from damages.

23 5. Plaintiff failed to mitigate damages.

24 6. Defendants are entitled to 11th Amendment immunity with regard to any state
25 claims asserted by Petitioner.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, and I certify that I mailed by United States Postal Service the document to the following non CM/ECF participants:

GARY C TANNER #634323
MONROE CORRECTIONAL COMPLEX
SPECIAL OFFENDER UNIT
PO BOX 514
MONROE WA 98272-0514

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 19th day of November, 2007, at Spokane, Washington.

/s/ Patty Willoughby
PATTY WILLOUGHBY
Legal Assistant